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**From:** Chesnutt, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E1CD369E94474C2C8A876FB16943320A-JCHESNUT]  
**Sent:** 4/23/2018 8:32:30 PM  
**To:** LEE, LILY [LEE.LILY@EPA.GOV]  
**Subject:** Fwd: Releasing Draft HPNS Radiological Sampling Plans

Begin forwarded message:

**From:** "Fairbanks, Brianna" <[Fairbanks.Brianna@epa.gov](mailto:Fairbanks.Brianna@epa.gov)>  
**Date:** April 23, 2018 at 10:32:29 AM PDT  
**To:** "Butler, Thomas" <[Butler.Thomas@epa.gov](mailto:Butler.Thomas@epa.gov)>, "Chesnutt, John" <[Chesnutt.John@epa.gov](mailto:Chesnutt.John@epa.gov)>, "Herrera, Angeles" <[Herrera.Angelos@epa.gov](mailto:Herrera.Angelos@epa.gov)>  
**Subject:** FW: Releasing Draft HPNS Radiological Sampling Plans

FYI, appeal from the Golden Gate Law Clinic and Greenaction for opportunity to review draft sampling plans.

**Brianna Fairbanks**

Attorney/Advisor  
EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3907

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**From:** Steven Castleman [<mailto:scastleman@ggu.edu>]  
**Sent:** Friday, April 20, 2018 2:56 PM  
**To:** Fairbanks, Brianna <[Fairbanks.Brianna@epa.gov](mailto:Fairbanks.Brianna@epa.gov)>  
**Cc:** [Lee.Lilly@epa.gov](mailto:Lee.Lilly@epa.gov); Tencate, Michael CIV NAVFAC HQ, OOC <[michael.tencate@navy.mil](mailto:michael.tencate@navy.mil)>; Robinson, Derek J CIV NAVFAC HQ, BRAC PMO <[derek.j.robinson1@navy.mil](mailto:derek.j.robinson1@navy.mil)>; [marvin.d.norman@navy.mil](mailto:marvin.d.norman@navy.mil); [thomas.l.macchiarella@navy.mil](mailto:thomas.l.macchiarella@navy.mil)  
**Subject:** Releasing Draft HPNS Radiological Sampling Plans

Brianna,

We have requested that the Navy release the draft plans to resample Tetra Tech's work so that we have an opportunity to offer meaningful input into the development of the plans without having to wait until the formal comment period. Specifically, we asked the Navy to release the draft plans when they were transmitted to EPA, DTSC and the other regulatory agencies. The Navy's attorney, Mike Tencate, informed me today that the draft sampling plans were submitted to EPA more than a week ago. We believe we can make positive contributions to the planning process which will make it more efficient and preclude delay. In light of the checkered history of the radiation cleanup and our role in exposing the fraud - the Navy and EPA would never have known about the extent of the fraud and might very well have transferred still-contaminated parcels to the City and developer but for the efforts of Greenaction, the whistleblowers and their attorney, David Anton, and the environmental clinic - it's in the interest of the EPA and Navy to include us in the planning process.

We have argued that: 30 days is inadequate time for us to review sampling plans that have taken the better part of a year to draft; it appears the Navy wants to present the public with a *fait accompli* that they have no intention of altering, making a mockery of the right to public participation; and if the Navy wants to rebuild any semblance of trust with the community, it has to bend over backwards to include the community in the planning process. This means treating Hunters Point Shipyard as the unique situation it is, justifying public participation over and above what is normally the case.

One of the concerns Mr. Tencate raised was that we might interfere in the agencies' internal and inter-agency reviews. I asked him if he would inquire whether that was the case or if, having relied on the results of our investigation to inform their review of the Navy's data, the agencies might welcome our early input as a way to make the process more efficient and preclude the extensive delays at the public-comment stage that the complexity of the plan will necessarily entail. He agreed to ask the regulatory agencies if they would agree to the early release of the draft plans.

In light of the checkered history of the radiation cleanup and our role in exposing the fraud - the Navy and EPA would never have known about the extent of the fraud and might very well have transferred still-contaminated parcels to the City and developer but for the efforts of Greenaction, the whistleblowers and their attorney, David Anton, and the environmental clinic - it's in the interest of the EPA and Navy to include us early in the planning process.

During my conversation with Mr. Tencate today, I reminded him that communication is a two-way street. Essentially, I asked him to consider a thought experiment; what would happen if the shoe was on the other foot? To date, for example, we have supplied the Navy and EPA with all new evidence our investigation has developed as soon as we were comfortable it was reliable. We are continuing to actively investigate and expect to obtain evidence that will further impact the re-testing. How would the Navy like it, I asked, if we withheld significant new information affecting the sampling until the public comment period rather than turning it over right away so it could be factored into the planning?

To be clear, we are not there yet; we are not in a position to provide additional affidavits at this time. But we are working hard pursuing leads which we expect to bear fruit. It's in no one's interest to have to redo sampling planning yet a third time, but that's what could happen.

Accordingly, I respectfully request that you consult with your EPA colleagues to determine if EPA would approve providing the sampling plans to us in their draft stage rather than waiting until the formal comment period. We would appreciate it if you would let us and the Navy know EPA's posture in this regard.

Thank you for your attention to this matter. Please let me know if you have any questions about this request or if you require any additional information.

Best,

steve

**Steve Castleman**

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Environmental Law and Justice Clinic

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